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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 63

THE NORTHWESTERN BANDS OF SHOSHONE INDIANS,

Petitioners,

vs.

THE UNITED STATES

BRIEF AMICI CURIAE

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Attorney General of the State of Idaho;
GROVER A. GILES,
Attorney General of the State of Utah.

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This brief is filed by the undersigned *amici curiae* in support of the contentions of petitioners that the judgment of the Court of Claims should be reversed. Most of petitioner Indians reside in the States of Idaho and Utah; and this brief is filed by reason of the interest of those states in trying to obtain justice for an indigent and deserving portion of their citizenry.

The claims of petitioners against the United States have existed since before the formal organization of our respective states. The treatment accorded them—that of depriving them of their land, after they had been peaceful and fair enough to grant all rights in that land requested by

respondent and in circumstances which led them to believe that their title would be respected—comprises a chapter in our history of which we are not proud, and for which retribution, so far as it can, should now be made. And notwithstanding that a jurisdictional act was adopted to settle the very claims for taking of the lands which these Indians had so long asserted against the federal government, and was so understood by Congress,[1] the decision of the court below leaves those claims undetermined, on the theory that the claims do not "arise under or grow out of" the Treaty of July 30, 1863.

Having in mind the determination of Congress to put at rest these long-standing claims, the jurisdictional act ought to be read in the sense which would accomplish the intention of Congress. It will be noted that that act refers not merely to the claims "arising under or growing out of" the treaties of the Shoshones, but to claims arising under or growing out of "any subsequent treaty Act of Congress, or Executive order" (App. to Ptr's brf. p. 1).

This last part of the statute is not even quoted in respondent's brief (p. 13). Even, therefore, if respondent were correct in its elaborate argument that the treaty itself constituted no formal recognition of the rights of petitioners in their lands, still it cannot be doubted—as both

[1] The Secretary of Interior in reporting to Congress on the purpose of the bill which became the jurisdictional act in this case said: "The records show that the northwestern bands of Shoshone Indians were parties to the treaty of July 30, 1863 (13 Stat. 663), by which they affirmed the treaty of July 2, 1863 (18 Stat. 685), between the United States and the eastern band of Shoshone Indians.

"The northwestern bands of Shoshone Indians are, *under the treaties mentioned*, asserting claims against the United States for large tracts of land in northern Utah and Nevada, and in southern Oregon and Idaho, and which lands, they allege were disposed of by the Government without a cession by or consent of these Indians." (Italics added.) S. Rep. No. 519, 70th Cong., 1st Sess.

the opinion of the court below (R. 27) and the brief of respondent (p. 3) have recognized—that petitioners at the time of the treaty actually had an Indian title, which, under the familiar decisions of this court were entitled to protection and respect. *United States* v. *Santa Fe Pac. R. Co.*, 314 U. S. 339, 345, and cases cited therein. As early as *Mitchel* v. *United States*, 9 Pet. 711, 746, this Court considered the Indian "right of occupancy * * * as sacred as the fee-simple of the whites."

Subsequent to the consummation of the Shoshone treaties many of these lands were taken either under statutes providing for grants to railroads,[2] grants of land to the states for schools, etc.,[3] or executive orders establishing forest and other reserves,[4] and reservations for other Indians.[5] The opinion of the court below completely overlooked that, in any event, these takings come within the express language of the jurisdictional act quoted above.

We by no means accept the decision of the court below or the argument of respondent in this Court that petitioners did not obtain from the United States in the Shoshone Treaties a clear recognition of petitioners' title to the lands set out by respondent's commissioner both in the treaties and in the map which he forwarded to Washington and which was before Congress when the treaties were ratified. We see little to be added to petitioners' brief in this

[2] Act of July 2, 1864, 13 Stat. 356; Act of July 27, 1866, 14 Stat. 492.

[3] The respective state enabling acts granted certain numbered sections to Nevada, Idaho and Utah for school and other public purposes: see Act of March 21, 1864, 13 Stat. 30 (Nevada), Act of July 3, 1890, 26 Stat. 216 (Idaho) and Act of July 16, 1894, 28 Stat. 107 (Utah).

[4] See Motion for Call upon Secretary of Interior, Item 3 (R. 95) and Reply of Secretary of Interior, paragraph 3 (R. 99).

[5] See Executive Order of June 14, 1867, establishing the Fort Hall Indian Reservation, 1 Kappler 838.

respect. We urge on petitioners' behalf that, the United States having bound itself by treaty of peace and friendship to proceed only in recognition of the rights of the Shoshone Nation in their national domain, violated that treaty in spirit and letter when it proceeded to take that national domain in utter disregard of the rights of the Indians. The result is that a peaceful and friendly people, lulled into a sense of security by the proffers of the United States of peace and amity, have been reduced from a nation able to wrest their living from their primitive ancestral home to a nondescript, homeless, and poverty-stricken aggregation of bands of Indians, without the means to compete in the modern civilization which had disseised them. Until the treaty with petitioners, petitioners were so strong and formidable that the trouble and expense of taking their lands by war—leaving out of account the dishonor that would have been involved in proceeding against a nation which had given no cause for war—would have far outweighed the expense of settling with them for their lands at whatever the cost in money. But the United States did neither. Congress felt it could not at that time afford to extinguish petitioners' title by purchase. Consequently, for a meager consideration, the petitioners granted respondent certain valuable rights in those lands. For respondent, under these circumstances, to attempt to deny petitioners' title is unworthy of our country.

The faith of this nation having been pledged in the treaties, the honor of the nation demands, and the jurisdictional act requires, that these long-unsettled grievances be settled by this court in simple justice to a downtrodden people. Any judgment obtained, under the language of the jurisdictional act, will be deposited in the Treasury of the United States and be used for their "health, education and

industrial development," which is the only retribution we can now make for wrongs perpetrated upon them.

Respectfully submitted,

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